

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF GROUND WATER )  
APPLICATION NO. G3-21721 )  
 )  
RALPH GERING & SONS and )  
MENNO MENNONITE CHURCH, )  
 )  
Appellants, )  
 )  
v. )  
 )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
S. R. SHANNON, d.b.a. S-K )  
RANCH, )  
 )  
Respondents. )

PCHB Nos. (642) and 642-A

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, an appeal from an order which authorized the issuance of a ground water permit, came before the Pollution Control Hearings Board, David Akana, presiding officer, at a formal hearing in Ritzville (at 9:30 A on October 30, 1974) and Olympia (at 10:00 AM on November 5, 1974).

Appellants were represented by their attorney, Milton P. Sackmann;  
Respondent Department of Ecology was represented by Wick Dufford, Assistant

1 Attorney General; Respondent S. R. Shannon, d.b.a. S-K Ranch, was  
2 represented by his attorney, Charles T. Schillberg. Spokane court  
3 reporter, Jo Ann Ames, recorded the proceedings in Ritzville. Olympia  
4 court reporters Rosemary Coons and Eugene E. Barker, recorded the  
5 proceedings in Olympia.

6 Having read the transcript, having seen the exhibits and having  
7 considered exceptions and denied same, and being fully advised, the  
8 Pollution Control Hearings Board makes the following

9 FINDINGS OF FACT

10 I.

11 Respondent S. R. Shannon is the owner of the S-K Ranch (S-K). On  
12 September 10, 1973, S-K's ground water permit application was received  
13 by the Respondent Department of Ecology (Department). The Department  
14 thereafter issued a permit pursuant to an order issued on June 24, 1974.  
15 Appellants timely filed their appeal of the Department's action with this  
16 Board.

17 II.

18 The ground water permit allows the maximum appropriation of 4,000  
19 gallons per minute and 5,255 acre-feet per year from April 1st to  
20 October 31st of each year, for the irrigation of 2,102 acres from a well  
21 located on the SW 1/4 of Section 24, Township 19, Range 32 E.W.M. in Adams  
22 County. The source of the ground water is limited to what is described  
23 as Zone C in the Odessa Ground Water Sub-area Management Policy chapter  
24 173-130 WAC and more specifically under WAC 173-130-030. The permit  
25 further requires that the well be so constructed as to effectively and  
26 permanently seal off all aquifers in what is described as Zone A in

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

WAC 173-130-030. The authorization to appropriate the public waters is also expressly made subject to all existing rights. If the applicant cannot fulfill the conditions of his Zone C permit, he may become, at best, a junior appropriator of Zone A water. He could get nothing. (See Exhibit R-1)

### III.

One party Appellant is Ralph Gering & Sons, a farming partnership located in Ritzville. The other Appellant is the Menno Mennonite Church, the owner of a domestic well. Both party-Appellants have appealed the order allowing S-K's permit alleging, *inter alia*, irreparable damage to their existing rights. Specifically, the Appellants allege that a Zone C does not exist separately from Zone A and that the Department's casing and sealing requirements are not adequate nor enforceable.

### IV.

There is a substantial amount of evidence that establishes, with reasonable probability, that Zone C and Zone A are separate zones. There is a strong likelihood that a relatively impervious layer of basalt of approximately 300 feet thickness separates the two zones over a wide area in the Odessa region. Although the degree of separability between the zones cannot be established with absolute certainty, there is a reasonable probability that a substantial separation exists in the area of concern. The Department will observe the drilling operation and take data in order to increase the scientific information available in this area.

### V.

The intended method of casing and sealing off these zones appears to be a feasible technique. In any event, the withdrawal of water will

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 be monitored by the Department, and any failure of the casing and seal  
2 construction will be apparent. If the well cannot be properly sealed,  
3 the permit conditions as hereinbefore described would govern subsequent  
4 events. (See Exhibit R-1)

5 A similar result would occur if the separation between Zone A and  
6 Zone C does not exist. The Department's water monitoring would disclose  
7 any problem and the permit conditions would govern subsequent events.

8 The risk to Appellants' water rights is quite small in view of the  
9 evidence and the conditions placed upon the Respondent S-K Ranch. In  
10 comparison, the benefits possible are substantial in terms of economic  
11 considerations and scientific knowledge. We find that the Appellants will  
12 suffer no irreparable factual harm from S-K's project. Moreover, to  
13 reverse the Department's order based upon mere speculative possibilities  
14 would not permit proper management of the water resources of the state.  
15 The Department's action represents the proper and substantiated exercise  
16 of its expertise in and of its responsibility for water management.

## 17 VI.

18 Any Conclusion of Law hereinafter deemed to be a Finding of Fact  
19 is herewith adopted as same.

20 From these Findings, the Pollution Control Hearings Board comes  
21 to these

## 22 CONCLUSIONS OF LAW

### 23 I.

24 The Appellants have not proved that the Respondent Department had no  
25 factual basis upon which to classify Zone A and Zone C as separate zones.  
26 Rather, the preponderance of the evidence establishes that such zones

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 probably exist. The possibility that Zone A and Zone C are not separate  
2 zones is of no legal consequence. We deal here with probabilities and not  
3 possibilities.

4 II.

5 The Appellants have not proved that the casing and sealing require-  
6 ments of the permit are neither adequate nor enforceable. The evidence  
7 establishes that there is a feasible technique for sealing and casing the  
8 well and that the well-monitoring provisions will provide notice of the  
9 effectiveness of the technique.

10 III.

11 The Appellants have not shown how the Department's order allowing the  
12 appropriation of water from Zone C could harm them in a legal sense.  
13 Moreover, even if water is eventually shown to have come from Zone A, the  
14 permit provisions which would limit S-K's withdrawal as a junior  
15 appropriator would not legally harm Appellants under the present management  
16 policies embodied under 173-130 WAC.

17 IV.

18 Any Finding of Fact which should be deemed a Conclusion of Law is  
19 hereby adopted as such.

20 Therefore, the Pollution Control Hearings Board issues this

21 ORDER

22 The Department of Ecology order authorizing the appropriation of  
23 public waters from Zone C in the above-entitled matter is hereby  
24 affirmed.

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington this 12<sup>th</sup> day of May, 1971.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith  
4 CHRIS SMITH, Chairman

5 Walt Woodward  
6 WALT WOODWARD, Member

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22 The Department of Ecology order authorizing the appropriation of  
23 public waters from Zone C in the above-entitled matter is hereby  
24 affirmed.

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27 FINDINGS OF FACT,  
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1 DONE at Lacey, Washington this 21<sup>st</sup> day of February, 1974.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward

4 WALT WOODWARD, Chairman

5 Did not participate

6 W. A. GISSBERG, Member

7 Chris Smith

8 CHRIS SMITH, Member

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